

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

FRANCISCO R. GARCIA,

Plaintiff,

-vs-

MICHAEL J. ASTRUE,

Commissioner of Social Security  
Administration,

Defendant.

Case No. CIV-11-1206-F

**ORDER**

On August 29, 2012, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation, wherein he recommended that a judgment enter affirming the decision of the Commissioner to deny plaintiff's applications for benefits. Magistrate Judge Purcell specifically concluded that substantial evidence in the record supported the Commissioner's findings and conclusion with respect to plaintiff's applications and that no error occurred in the Administrative Law Judge's evaluation of the evidence. As part of the Report and Recommendation, Magistrate Judge also concluded that plaintiff was not eligible for benefits before March 17, 2010, due to his convictions and incarceration, and thus was required to demonstrate that he was disabled before March 17, 2010, with respect to his applications.

Presently before the court is plaintiff's objection to the Report and Recommendation. Plaintiff contends that Magistrate Judge Purcell (1) misapplied the law in deciding when plaintiff must show disability and (2) failed to apply the correct legal standards in concluding the Administrative Law Judge ("ALJ") did not err in assessing plaintiff's residual functional capacity ("RFC"). As to the second

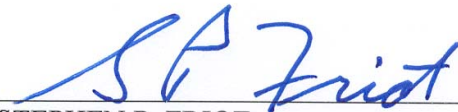
contention, plaintiff asserts that the Administrative Law Judge's selective "picking and choosing" of evidence, failure to properly develop the record at the hearing to support his conclusions and failure to explain, pursuant to the requirements of Rule 96-8p, how he reached his RFC assessment for light work, are legal errors which Magistrate Judge Purcell has "unfortunately perpetuated and endorsed, rather than corrected." *See*, plaintiff's objection (doc. no. 18), p. 11.

In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court rejects plaintiff's arguments that Magistrate Judge Purcell did not apply the correct legal standards in concluding the ALJ did not err in assessing plaintiff's RFC. The court concurs with Magistrate Judge Purcell's conclusion that substantial evidence in the record supports the Commissioner's findings and conclusions with respect to plaintiff's applications and that no error occurred in the Administrative Law Judge's evaluation of the evidence. In light of this ruling, the court concludes that it need not address plaintiff's objection relating to Magistrate Judge Purcell's finding that plaintiff must demonstrate he was disabled before March 17, 2010, with respect to his applications. The ALJ had concluded that plaintiff was not under a disability within the meaning of the Social Security Act from October 14, 2008 until the date of his decision, dated April 30, 2010. As there is nothing in the record which would show a change in circumstances from March 17, 2010 to April 30, 2010, the court concludes that even if the court were to conclude that the Magistrate Judge erred, it would be harmless. The court therefore concludes that it is not necessary to address plaintiff's objection relating to Magistrate Judge Purcell's finding that plaintiff must demonstrate he was disabled before March 17, 2010.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell, filed August 29, 2012 (doc. no. 17), is

**ACCEPTED, ADOPTED and AFFIRMED.** The final decision of the defendant, Michael J. Astrue, Commissioner of Social Security Administration, denying plaintiff's concurrent applications for disability insurance and supplemental security income benefits is **AFFIRMED**.

DATED October 4, 2012.

  
\_\_\_\_\_  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

11-1206p002.wpd